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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 447

THE UNITED STATES OF AMERICA, APPELLANT

v.

SHELDON MAURICE ANDERSON

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON

BRIEF FOR THE UNITED STATES

OPINION BELOW

The memorandum opinion of the district court (R. 4–10) is reported at 60 F. Supp. 649.

JURISDICTION

The jurisdiction of this Court on direct appeal is invoked under the Act of March 2, 1907, c. 2564, 34 Stat. 1246, as amended by the Act of May 9, 1942, c. 295, 56 Stat. 271, 18 U. S. C., Supp. IV, 682, commonly known as the Criminal

Appeals Act, and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938, 28 U. S. C. 345. The order of the district court sustaining appellee's demurrer to the indictment was filed on July 10, 1945 (R. 21–22).[1] The appeal to this Court was applied for (R. 22–23) and allowed (R. 24) on July 31, 1945. Upon submission of the Government's statement as to jurisdiction, this Court on November 5, 1945, postponed further consideration of the question of its jurisdiction to the hearing on the merits (R. 26).

QUESTIONS PRESENTED

1. Whether the order of the district court sustaining the demurrer to the indictment was predicated upon a construction of Section 11 of the Selective Training and Service Act, the statute upon which the indictment was founded.

2. Whether a selective service registrant who reports at the induction station but refuses to submit to induction may be prosecuted therefor in the federal judicial district where such refusal occurred or whether the Selective Training and Service Act and the regulations thereunder require that he be prosecuted in the district in which his local board is located.

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[1] An earlier order sustaining the demurrer, dated June 12, 1945 (R. 10), was vacated on July 10, 1945 (R. 21), after the Government had filed a petition for rehearing (R. 11–20) which the court granted (R. 21).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Section 11 of the Selective Training and Service Act of 1940 (54 Stat. 894–895, 50 U. S. C. Appendix 311) provides:

> Any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said Act, rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or nonliability of himself or any other person for service under the provisions of this Act, or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, *or who in any manner shall*

> *knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act,* or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the Administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so, shall, *upon conviction in the district court of the United States having jurisdiction thereof,* be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by any military or naval court martial in any case arising under this Act unless such person has been actually inducted for the training and service prescribed under this Act or unless he is subject to trial by court martial under laws in force prior to the enactment of this Act. Precedence shall be given by courts to the trial of cases arising under this Act. [Italics added.]

Article III, Section 2, Clause 3, of the Constitution, provides:

> The Trial of all Crimes * * * shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; * * *.

The Sixth Amendment provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law * * *.

The Criminal Appeals Act, 34 Stat. 1246, as amended, 18 U. S. C. 682 (Supp. IV) provides in pertinent part:

> An appeal may be taken by and on behalf of the United States from the district courts direct to the Supreme Court of the United States in all criminal cases in the following instances, to wit:
>
> From a decision or judgment quashing, setting aside, or sustaining a demurrer or plea in abatement to any indictment or information, or any count thereof, where such decision or judgment is based upon the invalidity or construction of the statute upon which the indictment or information is founded.
>
> * * * * *
>
> The appeal in all such cases shall be taken within thirty days after the decision or judgment has been rendered and shall be diligently prosecuted.
>
> Pending the prosecution and determination of the appeal in the foregoing instances, the defendant shall be admitted to bail on his own recognizance: *Provided,* That if an appeal shall be taken pursuant

to this section to the Supreme Court of the United States which, in the opinion of that Court, should have been taken to a circuit court of appeals, or the United States Court of Appeals for the District of Columbia, the Supreme Court of the United States shall remand the cause to the Circuit Court of Appeals or the United States Court of Appeals for the District of Columbia as the case may be, which shall then have jurisdiction to hear and determine the same as if the appeal had been taken to that court in the first instance; and if an appeal shall be taken pursuant to this section to any circuit court of appeals or to the United States Court of Appeals for the District of Columbia, which, in the opinion of such court, should have been taken directly to the Supreme Court of the United States, such court shall certify the case to the Supreme Court of the United States, which shall thereupon have jurisdiction to hear and determine the cause to the same extent as if an appeal had been taken directly to that Court.

* * * * *

STATEMENT

Appellee registered with a local board in Spokane, Washington, under the Selective Training and Service Act of 1940. He was ordered to report for induction and reported at the local board in Spokane pursuant to this order. He proceeded with a group of inductees to the induction station at Fort Lewis, Washington.

While at Fort Lewis, he refused to complete the induction process by submitting to induction. (R. 5.)

The appellee was indicted (R. 2–3) on May 12, 1945, in the United States District Court for the Western District of Washington in one count charging that on or about April 18, 1945, at Fort Lewis, Washington, he "did knowingly fail, neglect, and refuse to perform a duty required of him under the Selective Training and Service Act of 1940 and the Rules and Regulations issued thereunder in that he * * * did then and there refuse to submit to induction and to be inducted into the Armed Forces of the United States as directed and ordered so to do by Spokane City Local Draft Board No. 2 of Spokane, Washington," in violation of Section 11 of the Selective Training and Service Act (*supra*, p. 3). The city of Spokane, where appellee is registered, is in the eastern district of Washington, and Fort Lewis, where he refused to be inducted, is in the western district of Washington (R. 5).

Appellee demurred (R. 3) to the indictment on the ground, *inter alia*, that the District Court for the Western District of Washington had "no jurisdiction of the defendant or of the subject matter of the action." Pursuant to a memorandum opinion dated June 8, 1945 (R. 4–10), the district court entered an order on July 10, 1945 (R. 21–22), sustaining the demurrer on the

ground that "this court has no jurisdiction of the defendant, nor of the subject matter of this action."

SPECIFICATION OF ERRORS TO BE URGED

1. That the court erred in holding that a violation of Section 11 of the Selective Training and Service Act of 1940 (54 Stat. 894–895, 50 U. S. C. Appendix 311) by the refusal of a registrant to submit to induction as directed by the order of his local board may only be prosecuted in the federal district in which the local board is located and may not be prosecuted in the federal district in which the induction station, at which the refusal to submit to induction occurred, is located.

2. The District Court erred in sustaining the demurrer to the indictment.

SUMMARY OF ARGUMENT

I

The decision of the district court sustaining the demurrer purported to and was based upon a construction of Section 11 of the Selective Training and Service Act, upon which the indictment is founded. This Court possesses jurisdiction under the Criminal Appeals Act to entertain a direct appeal by the Government from an order sustaining a demurrer, where the decision is based upon a construction of the statute upon which the indictment is founded. Since the appeal was applied for and allowed within thirty days from the entry of the district court's order, the appeal is timely.

II

The provision of Section 11 of the Selective Training and Service Act, adverted to by the district court, that violators shall be prosecuted in the "district court of the United States having jurisdiction thereof" has no bearing on the question where the offense of refusing to submit to induction occurred; it is merely a venue requirement that the prosecution shall be in the district in which the offense occurs. Under the Act and Selective Service Regulations the duty to submit to induction arises at the induction station after the registrant has been accepted for service and the offense of refusing to submit to induction necessarily occurs at the induction station when a registrant refuses to be inducted.

ARGUMENT

I

THE APPEAL IS TIMELY AND THE DECISION BELOW SUSTAINING THE DEMURRER TO THE INDICTMENT IS PREDICATED SOLELY UPON THE DISTRICT COURT'S CONSTRUCTION OF THE SELECTIVE TRAINING AND SERVICE ACT

This Court's order of November 5, 1945 (R. 26), stated that the Government's statement as to jurisdiction had been considered by the Court and that "further consideration of the question of jurisdiction of this Court is postponed to the hearing on the merits."

The Government has appealed directly to this Court under the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246, as amended by the Act of May 9, 1942, c. 295, 56 Stat. 271, 18 U. S. C., Supp. IV, 682. The second paragraph of that act permits a direct appeal from "a decision or judgment * * * sustaining a demurrer * * * to any indictment or information, or any count thereof, where such decision or judgment is based upon the * * * construction of the statute upon which the indictment or information is founded." The indictment in this case is founded on Section 11 of the Selective Training and Service Act, which makes it a criminal offense for a registrant to fail to perform a "duty" under the act or the regulations promulgated pursuant to the authority of the act. In this case appellee was charged with failing to perform his "duty" of submitting to induction as ordered by his local board. And in sustaining the demurrer to the indictment, the district court held generally that the offense occurred in the judicial district in which the local board was located and that the district court for that district is the only court which had jurisdiction of the offense.[2] The court's rea-

[2] While the order of the district court sustaining the demurrer was predicated on the ground not only that the court lacked jurisdiction of the subject matter but also of the defendant himself (R. 22), it is clear from the court's opinion that the defendant was personally in court (R. 40–45) and that what the court meant was that it lacked jurisdiction over the defendant solely because it had no jurisdiction of the case

soning appears in its memorandum opinion of June 8, 1945 (R. 4–10), rendered in connection with an earlier order sustaining the demurrer (R. 10), which was vacated (R. 21) upon the Government's petition for rehearing (R. 11–20).[3]

At several places in its opinion (R. 5–6, 8, 9) the court stated that it was construing the Selective Training and Service Act, as well as the Selective Service Regulations. The only specific provision of the act to which it referred is that portion of Section 11 which provides that a defendant who violates the act shall be punished "upon" conviction in the district court of the United States having jurisdiction thereof." It is

(R. 6). The demurrer, in addition to challenging the jurisdiction of the court, attacked the indictment as not stating facts sufficient to constitute a crime (R. 3), but the district court (R. 21–22) overruled the demurrer on this ground.

[3] There can be no question concerning the timeliness of the appeal, for the order of the district court from which the appeal is taken was entered July 10, 1945 (R. 21–22), and the appeal was applied for and allowed on July 31, 1945 (R. 24), within thirty days after the entry of the order, as required by the Criminal Appeals Act. A chronological summary of the proceedings in the district court on the demurrer shows that in the first instance the court overruled it on June 2, 1945 (R. 3–4); thereafter, on June 8, the court entered a memorandum opinion (R. 4–10) and on June 12, an order (R. 10) sustaining the demurrer. On June 25, 1945, the Government filed a petition for rehearing (R. 11–20) asking that the order sustaining the demurrer be set aside and that the demurrer be overruled. On July 10, 1945, the court granted the petition for rehearing and vacated its order of June 12, 1945 (R. 21). On the same day, after reargument of the demurrer, the court entered the order appealed from sustaining the demurrer (R. 21–22).

difficult to determine from the opinion whether the district court utilized this provision in support of its holding that the offense occurred in Spokane, where the local board was located, or whether it relied upon this provision only in support of its apparent conclusion that the only district court which possesses jurisdiction of any offense under Section 11 is the district court within whose territorial limits the offense occurs; that the clause in question prescribes a non-waivable territorial jurisdictional limitation (see R. 6) and is not a mere venue provision. In either event, however, the court construed section 11 and, as is required by the Criminal Appeals Act as a condition to this Court's jurisdiction, it thus construed the statute upon which the indictment is founded. Cf. *United States* v. *Midstate Horticultural Co.*, 306 U. S. 161, 163, 164–165.

While the court did not specifically advert to it in its opinion, we think the court also necessarily construed the clause of section 11 penalizing any person "who in any manner shall knowingly fail or neglect to perform any *duty* required of him under or in execution of this act, or rules or regulations made pursuant to the act." (Italics added.) For only by construing the statutory terms could the court ascertain what the duty was and where it must be performed and hence where the offense occurred. Cf. *United States* v. *Johnson*, 323 U. S. 273; *United States* v. *Lom-*

bardo, 241 U. S. 73; *United States* v. *Freeman*, 239 U. S. 117; see also, *United States* v. *Foster*, 233 U. S. 515, 523.

In doing so, the court of course referred to the Selective Service Regulations which specifically impose upon the registrant the obligation to submit to induction. But at all times the court was engaged in construing the statutory term "duty required of him under or in execution of * * * [the] rules or regulations made pursuant to this act." If the duty required of appellee had been particularized in the statute itself there could be no question that there would be presented a construction of the act upon which the indictment is founded. The situation is no different where the duty required of the appellee is specified in the Selective Service Regulations, for the act incorporates those regulations for purposes of criminal punishment.

In its broad outlines this aspect of the case closely resembles *United States* v. *Birdsall*, 233 U. S. 223, which also involved a direct appeal to this Court under the Criminal Appeals Act. That case involved two indictments, one of which charged that the defendant gave a bribe to two officials of the Interior Department with intent to influence their official action so that they would advise the Commissioner of Indian affairs, contrary to the truth, that leniency should be given to specified persons who had been convicted for

unlawfully selling liquor to Indians, in violation of Section 39 of the Criminal Code (18 U. S. C. 91). Section 39 interdicts bribery of a government officer "with intent to influence him to commit * * * any fraud * * * on the United States, or to induce him to do or omit to do any act in violation of his lawful *duty.*" (Italics added.) The question before this Court was whether the action which was sought to be influenced was within the official duty of the persons who received the bribes. This Court, in the performance of its appellate function under the Criminal Appeals Act, construed Section 39 by looking to the regulations and usages of the Interior Department to determine the precise nature of the duties of the officials involved. Similarly, in this case the district court construed the statutory language in question by referring to the Selective Service Regulations.

Since the order of the district court was predicated upon a construction of the Selective Training and Service Act, this Court has jurisdiction of the appeal under the Criminal Appeals Act. If, however, this Court lacks jurisdiction, the case must be remanded to the Circuit Court of Appeals for the Ninth Circuit, "which shall then have jurisdiction to hear and determine the same as if the appeal had been taken to that court in the first instance." 18 U. S. C., Supp. IV, 682; see *United States* v. *Wayne Pump Co.*, 317 U. S. 200, 208–210.

II

THE OFFENSE OF REFUSING TO SUBMIT TO INDUCTION WAS COMMITTED IN THE JUDICIAL DISTRICT IN WHICH THE REFUSAL OCCURRED

Assuming that this Court possesses jurisdiction to consider the question presented by the case, the issue raised by the appeal is whether a registrant may be prosecuted under Section 11 of the Selective Training and Service Act, for failing to submit to induction, in the judicial district in which the failure occurred or whether he must be prosecuted in the district in which his local board is located. The question arises solely because the induction station to which appellee reported and at which he refused to submit to induction is located in a different judicial district from the one in which the local board is located.

1. As we have suggested, the district court's view as to where the offense occurred may have been predicated, in part at least, upon its view of the meaning of the provision of Section 11 that violators of the act shall be prosecuted in the district court having jurisdiction of the offense. We think that the statutory language in question does not aid in determining where the refusal to submit to induction occurred; instead, the provision is a venue requirement that the defendant shall be prosecuted where the offense occurred.

The words "in the district court of the United States having jurisdiction thereof" in Section 11 of

the Selective Training and Service Act of 1940 were first used in the Selective Draft Act of 1917 (Act of May 18, 1917, c. 15, 40 Stat. 76). Section 6 of the 1917 Act provided that violators "shall * * *. be guilty of a misdemeanor, and upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than one year, or, if subject to military law, shall be tried by court-martial and suffer such punishment as a court-martial may direct."

The 1917 Act was introduced in the House of Representatives as H. R. 3545 and a companion bill, S. 1871, was introduced in the Senate. Significantly, both bills originally contained the words "upon conviction in the *proper* district court of the United States" (italics added) in the penal clause. The Committee on Military Affairs of the House recommended that this provision be amended by striking out the word "proper" and inserting after the words "district court of the United States," the words "having jurisdiction thereof." The Committee report gave no explanation for this suggested amendment. H. Rep. No. 17, 65th Cong., 1st Sess. There was likewise no comment on this provision in the hearing before the Committee on H. R. 3545. The Committee amendment was adopted by the House without explanation or debate (55 Cong. Rec. 1534) and the bill passed the House containing the language

"in the district court of the United States having jurisdiction thereof." 55 Cong. Rec. 1557.

The Committee on Military Affairs of the Senate reported S. 1871 without amendment as to the provision here in question. S. Rep. No. 22, 65th Cong., 1st Sess. After the passage of H. R. 3545 in the House, the Senate substituted the entire provisions of S. 1871 for H. R. 3545. 55 Cong. Rec. 1629. Thus, as passed by the Senate, the bill contained the original language "upon conviction in the proper district court of the United States."

The bill was thereafter sent to conference and was reported by the Conference Committee with the House language. H. Rep. No. 49, 65th Cong., 1st Sess.; 55 Cong. Rec. 2197. The report gives no explanation for the use of the language in the House bill instead of that in the Senate bill. The bill was enacted without any additional reference to the provision in question.

Nothing in the history of the statutory language permits the conclusion that the provision was intended to fix the place where offenses under the act occur. Likewise, since every federal district court possesses jurisdiction over the subject matter of all federal criminal offenses (Act of March 3, 1911, Section 24, 36 Stat. 1091, 28 U. S. C. 41 (2)), we think the language of the 1917 Act (and of the present act) must have been intended to mean something other than jurisdiction over the

subject matter. We think the original language of the 1917 bill that prosecutions shall be had in the "proper district court of the United States" meant that the prosecution was to be in the district court for the district in which the offense was committed. Cf. *United States* v. *Midstate Horticultural Co., supra.* The ultimate change in the statutory language from the "proper" court to the court "having jurisdiction thereof" appears to have been a language change which was made without any purpose of changing the meaning of the provision in question.

Our examination of the judicial decisions relating to the penal provisions of the 1917 Act has revealed no case in which the language in question was construed by the courts. To our knowledge, it was generally assumed that venue for prosecutions under that Act was determined by applying the general rule that the prosecution shall be had where the offense was committed.

The 1940 Act was, of course, modeled on the 1917 Act. The Burke-Wadsworth bill, which was introduced in both the Senate (S. 4164; 86 Cong. Rec. 8680) and the House of Representatives (H. R. 10132; 86 Cong. Rec. 8908) and which eventually became the Selective Training and Service Act, contained the same statutory language, "in the district court of the United States having jurisdiction thereof," as was in the 1917 Act. The legislative history of the 1940 Act

shows that no change was ever made in the statutory language in question and that it was never the subject of discussion either in committee or upon the floor of either house of Congress.[4]

Viewed in the context of its history we think the provision of Section 11 that violations of the Act shall be prosecuted in the district court having jurisdiction thereof means nothing more than that the prosecution shall, consistently with the venue provisions of the Constitution, be had in the district where the offense was committed.

While the district court viewed the provision in question as a strictly jurisdictional rather than a venue provision (R. 6), it may be noted that under either characterization the prosecution was properly instituted in the Western District of Washington for, as we shall show, the only illegal act occurred in that district.

2. There can be no serious question that appellee's failure to submit to induction, which is the basis of the prosecution, occurred at the induction station, within the judicial district of the court below. When a registrant receives an induction order, he is required to report to the local board, to proceed from the local board to the induction station, and, if he is found acceptable, to submit to induction. See Section 633.21 (b) of the Se-

[4] The committee reports on the bills are as follows:
S. Rep. 2002, H. Rep. 2903, H. Rep. 2937, H. Rep. 2947, 76th Cong., 3d sess.

lective Service Regulations;[5] *Estep* v. *United States,* Nos. 66 and 292, this Term, decided February 4, 1946; *Billings* v. *Truesdell,* 321 U. S. 542, 557. Under this selective service procedure appellee could not have committed the offense of refusing to submit to induction within the district of his local board. For it was not until he had reported to the induction station and had been found acceptable that he was obliged to submit to induction. When he refused to do so, he, of course, failed to perform a duty required of him at the induction station. Since the act of submitting to induction was required to be performed at the induction station, the offense of refusing to do so necessarily occurred at that place; it could not have occurred at any other place. *Rumely* v. *McCarthy,* 250 U. S. 283; *United States* v. *Lombardo,* 241 U. S. 73; *New York Central* v. *United States,* 166 Fed. 267 (C. C. A. 2); *United States* v. *Commerford,* 64 F. 2d 28 (C. C. A. 2), certiorari denied, 289 U. S. 759; *Bowles* v. *United States,* 73 F. 2d 772 (C. C. A. 4), certiorari denied, 294 U. S. 710; *State* v. *Brewster,* 87 N. J. Law 75.

It is important that the charge in this case of

[5] "(b) Upon reporting for induction, it shall be the duty of the registrant: (1) to follow the instructions of a member or clerk of a local board as to the manner in which he shall be transported to the location where his induction will be accomplished, (2) to obey the instructions of the leader or assistant leaders appointed for the group being forwarded for induction, (3) to appear at the place where his induc-

refusing to submit to induction be distinguished from an indictment charging a failure to report for induction, such as was involved in *Falbo* v. *United States,* 320 U. S. 549. Where the latter offense is specified, we agree that the venue of the prosecution is the district in which the local board is located. For the offense is the failure to perform the act of reporting to the board and is thus committed in the district in which the board is located, regardless of whether the registrant is present in that district. *United States* v. *Van Den Berg,* 139 F. 2d 654 (C. C. A. 7); *Humes* v. *Pescor,* 148 F. 2d 127 (C. C. A. 8); cf. *Rumely* v. *McCarthy, supra.*

No other court, to our knowledge, has agreed with the decision of the district court. In *Bratcher* v. *United States,* 149 F. 2d 742, certiorari denied, 325 U. S. 885, the Circuit Court of Appeals for the Fourth Circuit flatly rejected a contention that a registrant of a local board in Washington, D. C., could not be prosecuted in the Eastern District of Virginia, in which the induction station was located.[6]

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tion will be accomplished, (4) to obey the orders of the representatives of the armed forces while at the place where his induction will be accomplished, (5) to submit to induction, and (6) if he is not accepted by the armed forces, to follow the instructions of the representatives of the armed forces as to the manner in which he will be transported on his return trip to the local board."

[6] Bratcher had been charged with evading military service by consuming benzedrine at the induction station.

It was the view of the district court that the Selective Service Regulations disclose an intention that violations shall be prosecuted only in the district in which the defendant is registered. However, the Regulations are merely related to the performance of the administrative functions of the Selective Service System and are not directed in any sense to the question of venue. In fact, the Regulations could not determine the venue for prosecutions in any other way than by defining the place where certain duties are to be performed.

The court relied largely on Section 613.14 of the Regulations, which provides that "the local board for the area in which the residence of the registrant is located, will always have jurisdiction of the registrant" (R. 7). This means that a registrant cannot change his local board even though he should move. We believe this clearly has no reference to the venue for criminal prosecutions. In addition, the court placed great reliance (R. 7–8) on the provisions of the Regulations (Sec. 613.21 and Sec. 642.41) dealing with the reporting of delinquents to the United States Attorney. These provisions, of course, could have no control over the question of venue and merely deal with the administrative problem of advising the Department of Justice of a possible violation warranting prosecution.[7] The other provisions of the Regulations re-

[7] It may be noted in this respect that the administrative instructions issued by the War Department in a case of refusal to submit to induction do not support the court's con-

lied on by the court do not, we believe, require special comment since they pertain in no way either to jurisdiction or venue for prosecutions.

Finally, the district court found that several cases under the 1940 Act seemed "to bear, either directly or inferentially, on this question of jurisdiction" (R. 8). In this connection the Court cited and quoted from *Falbo* v. *United States*, 320 U. S. 549, *Billings* v. *Truesdell*, 321 U. S. 542, and *United States* v. *Collura*, 139 F. 2d 345 (C. C. A. 2). We believe that none of these cases in any way dealt with the question here at issue and do not support the court's conclusions.

The only other case relied on by the Court was *United States* v. *Van Den Berg*, 139 F. 2d 654 (C. C. A. 7). In that case the defendant was registered with a local board in the eastern district of Wisconsin. While living in the western district of Wisconsin he was ordered to report to his local board in the eastern district for assignment to work of national importance under civilian direction. Failing to report, he was indicted in the eastern district. The circuit court

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clusion. After the decision in *Billings* v. *Truesdell*, 321 U. S. 542, it was deemed necessary to issue definite instructions as to cases in which registrants reported to the induction station but refused to submit to induction. The induction station officers were instructed to report cases of refusal to submit to induction to the United States Attorney for the district in which the induction station is situated rather than the district in which the local board is located. See A. R. 615-500, Para. 15 (f); see also, R. 15-16.

of appeals properly held that since the defendant failed to perform a duty required to be performed by him in the eastern district of Wisconsin, he was properly prosecuted in that district. This decision was based on the general rules of venue and in no way was based on any requirement that the defendant be prosecuted in the district in which his local board is situated.

CONCLUSION

For the reasons stated, this Court has jurisdiction of the appeal and appellee was validly prosecuted in the Western District of Washington. We, therefore, respectfully submit that the judgment below should be reversed and the case remanded for further proceedings.

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MARCH 1946.

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SUPREME COURT OF THE UNITED STATES.

No. 447.—October Term, 1945.

The United States of America, Appellant, *vs.* Sheldon Maurice Anderson.	Appeal from the District Court of the United States for the Western District of Washington.

[June 10, 1946.]

Mr. Justice Rutledge delivered the opinion of the Court.

On the merits the issue is narrow, namely, whether in a criminal prosecution under § 11 of the Selective Training and Service Act, 54 Stat. 885, 894; 50 U. S. C. App. § 311, for refusal to submit to induction, the venue is properly laid in the judicial district where the act of refusal occurred rather than in the district where the draft board which issued the order is located.

The facts in the case are simple. A draft board in the City of Spokane, Washington, had jurisdiction over appellee. He obeyed an order to report for induction issued by this board and, with others selected, went from Spokane to Fort Lewis, Washington. At Fort Lewis he refused to take the oath of induction unless assured that Army regulations requiring vaccination would be waived. The assurance was refused. He was not inducted and returned to Spokane. Later he was indicted in the District Court for the Western District of Washington, where Fort Lewis is located, for his refusal to submit to induction.

Appellee demurred to the indictment. One ground was that the court had "no jurisdiction of the defendant or the subject matter of the action." The District Court took judicial notice that, although Fort Lewis was within its territorial jurisdiction, the City of Spokane was located within the Eastern District of Washington. Believing the proper venue was the district where the draft board was located, the court concluded that in these circumstances it had no jurisdiction over the offense. Accordingly, it sustained the demurrer.[1] 60 F. Supp. 649.

[1] Subsequently on rehearing the District Court again sustained the demurrer on the ground that "this court has no jurisdiction of the defendant, nor of the subject matter of this action."

The United States has appealed directly to this Court under the Criminal Appeals Act.[2] We postponed determination of our jurisdiction to the hearing on the merits. — U. S. —.

The Criminal Appeals Act permits a direct appeal by the United States from district courts in criminal cases:

> "From a decision or judgment quashing, setting aside or sustaining a demurrer or plea in abatement to any indictment or information, or any count thereof, where such decision or judgment is based upon the validity or construction of the statute upon which the indictment or information is founded."

We think the Government is correct in availing itself of the right to appeal. Ordinarily when a district court sustains a demurrer to an indictment on the ground of improper venue the Government may appeal directly to this Court. Compare *United States* v. *Johnson*, 53 F. Supp. 596, with *United States* v. *Johnson*, 323 U. S. 273; *United States* v. *Lombardo*, 228 Fed. 980, with *United States* v. *Lombardo*, 241 U. S. 73; see *United States* v. *Freeman*, 239 U. S. 117; *United States* v. *Midstate Horticultural Co.*, 306 U. S. 161. This is true at any rate where the statute itself contains a venue provision. Cf., however, *United States* v. *Johnson*, *supra*.

Section 11 of the Selective Training and Service Act[3] provides that offenses such as the one with which appellee was charged shall be tried "in the district court of the United States having

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[2] Act of March 2, 1907, 34 Stat. 1246, as amended by the Act of May 9, 1942, 56 Stat. 271; 18 U. S. C. § 682.

[3] Section 11 of the Selective Training and Service Act of 1940 (54 Stat. 894, 50 U. S. C. App. § 311) provides:

> Any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having or exercising any authority under said Act, rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or non-liability of himself or any other person for service under the provisions of this Act, or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, *or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of*

jurisdiction thereof."[4] The District Court determined that it did not have "jurisdiction" of the offense. In doing so it necessarily construed the Act.[5] For in this case, as in *United States* v. *Midstate Horticultural Co., supra*, the statute under which the indictment was returned "provides expressly for the jurisdiction over offenses created by it . . . ."[6]

Accordingly this Court has jurisdiction of the appeal. We therefore pass to consideration of the merits.

The "jurisdictional" provision in § 11 is apparently derived from the Selective Draft Act of 1917, 40 Stat. 76.[7] Section 6 of that statute provided that those charged with offenses under or against the Act "shall, if not subject to military law, be guilty of a misdemeanor, and *upon conviction in the district court of the United States having jurisdiction thereof*, be punished by imprisonment for not more than one year." Emphasis added. The legislative history of the 1917 Act shows that the bills originally introduced in the Senate and House of Representatives read somewhat differently. The language was "upon conviction in the proper district court of the United States." However, the Committee on Military Affairs of the House of Representatives recommended the change in phraseology,[8] and both the House

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this Act, or rules or regulations made pursuant to this Act, or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so, shall, *upon conviction in the district court of the United States having jurisdiction thereof*, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. Emphasis added.

[4] The Government suggests that this is not a "mere venue provision" but "prescribes a non-waivable territorial jurisdiction limitation." We need not decide that question in this case.

[5] This is true, even though the District Court looked to the regulations promulgated under the Act as aids in interpretation. To what sources a court may go for its conclusions is not important, for purposes of the Criminal Appeals Act, so long as the end result is a construction of the statute.

[6] United States v. Midstate Horticultural Co., 306 U. S. 161, 163, note 2. That case turned on a not very dissimilar provision. *Id.* at 164-165, 67, note 4.

[7] No discussion of the provision is to be found in the legislative history of the Selective Training and Service Act. The bills introduced in the Senate and the House contained the same language employed in the Act as it was finally passed. S. 2164, 76th Cong., 3d Sess., introduced at 86 Cong. Rec. 2; H. R. 10132, 76th Cong., 3d Sess., introduced at 86 Cong. Rec. 12888.

[8] H. Rep. No. 17, 65th Cong., 1st Sess., 1.

and the Senate accepted the change.[9]

There is nothing in either the statute or the legislative history to show an intention on the part of Congress to depart from the Sixth Amendment's command that trials shall be in the "State and district wherein the crime shall have been committed." Exactly the contrary was the purpose and effect of the provision.

Since the statute does not indicate where Congress considered the place of committing the crime to be, compare *Armour Packing Co.* v. *United States*, 209 U. S. 56, with *United States* v. *Johnson*, *supra*, the *locus delicti* must be determined from the nature of the crime alleged and the location of the act or acts constituting it. Cf. *United States* v. *Bowman*, 260 U. S. 94, 97-98.

Although Anderson reported to Fort Lewis in accordance with the draft board's order and, so far as appears, observed it in every other respect except the final step of taking the oath and thus submitting to induction, cf. *Estep* v. *United States*, 326 U. S. —; *Billings* v. *Truesdell*, 321 U. S. 542; *Falbo* v. *United States*, 320 U. S. 549, the District Court concluded that the Act, together with the regulations, "clearly fixes the jurisdiction of the courts in reference to violations such as here involved, as being in the place where the local draft board is located." It supported this conclusion by inference from various regulations.[10]

We think the District Court was in error. Nothing in the Act apart from § 11, or in the regulations relied on, even purports to deal with venue or jurisdiction for the trial of violations, or justifies an inference that any effort was made to fix the place for all such trials in the district where the draft board is located.[11] We need not inquire how far this might have been

[9] The House of Representatives passed the bill with the provision as recommended by the Committee on Military Affairs. The Senate passed it with the provision in its original form but subsequently a conference committee adopted the House version. H. Rep. No. 49, 65th Cong., 1st Sess.

[10] The regulations upon which the District Court relied in part, with special emphasis on § 613.14, are not pertinent. As the Government says, they relate "to the performance of the administrative functions of the Selective Service System and are not directed in any sense to the question of venue" or jurisdiction of the courts to try offenses arising under the Act.

The District Court also thought some support for its ruling could be derived from the decisions in United States v. Collura, 139 F. 2d 345, and United States v. Van Den Berg, 139 F. 2d 654, although not regarding either as directly in point.

[11] It was noted in the petition for rehearing in the District Court, however, that the Department of Justice in 1942 had instructed United States Attorneys that, in cases of failure to report for induction "venue is in the district where the subject was ordered to report," apparently without regard to whether he had ever been present physically there.

done, if attempted. But obviously, in view of the Sixth Amendment's provision, no such over-all effort could be effective as to any violation taking place outside that district. The constitutional specification is geographic; and the geography prescribed is the district or districts[12] within which the offense is committed. This may or may not be the place where the defendant resides; where the draft board is located; or where the duty violated would be performed, if performed in full. The places of residence,[13] of the draft board's location, of final and complete performance,[14] all may be situated in districts different from that where the criminal act is done. When they so differ, it is the latter, not any of the former, which determines the jurisdiction.[15]

It is, of course, necessary in order to decide where the crime is committed to ascertain what duty it was, the failure to perform which constitutes the crime, and also what acts of the defendant constituted the violation. Difficulties at times arise in these respects, especially where the crime consists merely in omitting to do something which is commanded to be done.[16]

In this case, however, the problem is not difficult. For the duty was clear and precise, as were the place of performance and the place of refusal to perform, and the two places were identical.

The duty was to submit to induction. In the facts here, it was to take the oath. The place where this was required to be done was Fort Lewis and nowhere else. The place where appellee refused, flatly and unequivocally, to take it and thereby to submit

[12] Within the doctrine of continuing offenses, as to which trial constitutionally may be had in one or another of the districts in which the offense is carried on. Armour Packing Co. v. United States, 209 U. S. 56; cf. United States v. Johnson, 323 U. S. 273.

[13] Cf. Haas v. Henkel, 216 U. S. 462; Andrade v. United States, 16 F. 2d 776; United States v. Jordan, 22 F. 2d 702; United States v. Mayer, 22 F. 2d 827.

[14] Compare the cases holding that when an omission to act is the crime, the venue is the jurisdictional locality where the act should have been performed, e.g., Regina v. Milner, 2 Car. & K. 310, 175 Eng. Rep. 128; New York Cent. & H. R. Co. v. United States, 166 Fed. 267, 269; State v. Yocum, 182 Ind. 478; State v. Brewster, 87 N. J. L. 75; State v. Peabody, 25 R. I. 544; 1 Bishop, New Criminal Procedure (2d ed.) § 53 5). See United States v. Lombardo, 241 U. S. 73; Rumely v. McCarthy, 250 U. S. 283; United States v. Van Den Berg, 139 F. 2d 654, 656.

[15] Haas v. Henkel, 216 U. S. 462.

[16] Cf. authorities cited in note 14.

to induction was likewise Fort Lewis. Until that refusal, as the Government says, he had violated no provision of the law or of any regulation. It was his right under the *Falbo*, *Billings* and *Estep* decisions to exhaust the entire administrative process up to the final step before induction, as he did. Then for the first time he declined to go forward as he was required to do. This refusal was his crime. It took place at Fort Lewis. The District Court accordingly had jurisdiction.

We express no opinion concerning whether appellee's continued failure, after returning to Spokane, to take the oath would have conferred jurisdiction within that district under the idea of continuing offense. Nor need we express views concerning any other situation not involved in the facts, for example, such as would be presented on the present indictment if appellee had never left Spokane or reported at Fort Lewis.

The judgment is

Reversed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.